In the High Court of Judicature at Madras

Dated: 15.03.2007

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice N. PAUL VASANTHAKUMAR

Writ Appeal Nos.2917 & 2918 of 2002

1.The Government of Tamil Nadu,
rep. by Commissioner and Secretary
to Government, Food, Co-operation
and Consumer Protection Department,
Fort St. George, Chennai-9.

2.The Commissioner of Civil Supplies
and Consumer Protection,
Chepauk, Chennai-5.

3.The Additional Sub Collector,
Trichy.

4.The District Supply Officer,
Trichy. .. Appellants in both WAs./ Respondents

Vs

V.Kadirvelu .. Respondent in WP.2917/2002/ Petitioner

K.Ramalingam .. Respondent in WP.2918/2002/ Petitioner

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Writ Appeal filed under Clause 15 of the Letters Patent against the common order dated 07.08.2001 made in W.P.No.17868 and 17889 of 1994 these writ petitions filed under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus to call for the letter of the 2nd respondent dated 27.11.1993 and the proceedings of the 3rd respondent dated 27.11.1993 and the proceedings of the 3rd respondent dated 6.8.1994

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and 8.8.94 and 18.9.94 made in file No. NA.Ka.Pa.V94/65945/94 on NA.Ka.Pa.VE1 / 65944 /94 and quash them as illegal and consequently issue a mandamus forbearing the respondents herein invoking the provisions of the Tamilnadu Kerosene (Regulation of Trade) order 1973 and thereby interfering with the trading activities of the petitioner in any manner respectively.

For Appellants : Mr.P.Subramanian,
Government Advocate

For 1st Respondent : Mr.D.Peter Francis

COMMON JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM,J.)

Aggrieved by the common order of the learned single Judge dated 07.08.2001 made in W.P.Nos.17868 and 17889 of 1994, Government of Tamil Nadu, Food, Co-operation and Consumer Protection Department, Fort St. George, Chennai-9, and their Officers have filed the above appeal.

2.Heard the learned Government Advocate for the appellants as well as the learned counsel for the respondents.

3.In view of the order to be passed hereunder, we are of the view that it is unnecessary to refer all the factual details as stated by both parties.

4. According to the respondents, both of them are dealers for kerosene, operating under the parallel marketing system. Aggrieved by the letter dated 27.11.1993, Co-operation, Food and Consumer Protection Department, both of them filed writ petitions before this Court on the ground that as per the existing control order, no licence is required for a dealer, who is engaged in sale of kerosene under the parallel marketing system. It is also their case that the condition, making provision of licence mandatory for a dealer engaged in parallel marketing system is totally outside the powers of the Government of Tamil Nadu. It is also contended before the learned single Judge that there is no corresponding clause, insisting licence in the State Order also.

5.In the light of the stand taken by the petitioners, the learned single Judge, after verifying various provisions of the Essential Commodities Act as well as Kerosene (Restriction on Use and Fixation of Ceiling Price) Order 1993 and after satisfying

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himself that there is no specific provision that licence is required for a dealer when he deals with white kerosene under parallel marketing system, requested the Government Pleader to verify and find out the position. The order further shows that on verification and after getting specific instruction, the learned Government Pleader informed the learned Judge that there is no such provision in the Control Order and no amendment has been made so far.

6. In the light of the said information and in view of the fact that there is no enabling provision in the Control Order and no amendment has been made so far and after satisfying himself, the learned Single Judge quashed the impugned letter dated 27.21.1993 and allowed both the writ petitions. In the same order, the learned Judge permitted the State Government to bring out necessary amendments in the State order by insisting on dealers, who are dealing with the white kerosene under parallel marketing system, to obtain licence.

7. While taking up the above Writ Appeals, on going through the very same provisions and detailed order of the learned Judge, we asked the learned Government Advocate whether the same position continues or any amendment has been brought in, as suggested by the learned Judge.

8. Mr.P.Subramanian, the learned Government Advocate as well as Mr.D.Peter Francies, learned counsel appearing for the respondents informed this Court that the same position continues and no amendment has been brought in, incorporating such provision to cover dealers, who are handling white kerosene under the parallel marketing system, to obtain licence.

9. In view of the above factual information and of the statutory provisions as mentioned by the learned Judge, we are in entire agreement with the conclusion arrived at by the learned Judge and both the appeals are liable to be dismissed and accordingly, the same are dismissed. No costs.

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10. Learned counsel appearing for the respondents submitted that though the learned Judge directed the authorities either to return the white kerosene confiscated or value of the same as early as on 07.08.2001, the same has not been complied with till date.

11. In view of the above statement, the appellants are directed to comply with the said order within a period of two weeks from the date of receipt of a copy of this order, failing

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compliance of the same, the respondents are entitled simple interest at the rate of 6% for the value of the confiscated kerosene.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Commissioner and Secretary
to Government,Government of Tamil Nadu,
Food, Co-operation and Consumer Protection
Department, Fort St. George, Chennai-9.

2.The Commissioner of Civil Supplies
and Consumer Protection,
Chepauk, Chennai-5.

3.The Additional Sub Collector,
Trichy.

4.The District Supply Officer,
Trichy.

2 ccs to Mr.D.Peter Francies, Advocate, sr. 16228
1 cc to the Government Pleader, High Court, Madras. Sr. 16614

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